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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,432	01/07/2004	Jason G. Maxham	53217-014	3709

7590 08/23/2005

MCDERMOTT, WILL & EMERY
600 13th Street, N.W.
Washington, DC 20005-3096

EXAMINER

LIANG, GWEN

ART UNIT	PAPER NUMBER
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2162

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/752,432

Applicant(s)

MAXHAM ET AL.

Examiner

GWEN LIANG

Art Unit

2162

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): claim 34 under 35 U.S.C. 112, first paragraph.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-13 and 29-34.
Claim(s) withdrawn from consideration: 14-28.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

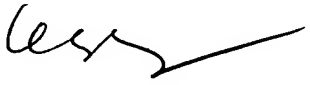
REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments regarding Claims 1, 13 and 29 that Burrows does not relate to distributing documents, a skilled artisan would not have been motivated to modify it to incorporate the document distribution scheme of Getchius, have been fully considered but they are not persuasive. As reasons stated on page 5 of the previous Office action, Burrows does teach the step in col. 1, lines 65-67, "FIG. 1 is a block diagram of a distributed database storing multimedia information indexed and searched according to the invention;" wherein the step of distributing various types of documents is inherent to form the distributed database. For further support, see Burrows, col. 3, lines 1-9. The motivation of combining Getchius and Burrows is that, as stated in the previous Office action, page 5, each node is capable of responding to any search request (Burrows, col. 18, lines 41-43). Therefore, the examiner maintains that one of ordinary skill in the art would be motivated to make the aforementioned combination with reasonable expectation of success.

Applicant's arguments regarding Claim 34 that the passage of Narendran cited by the Examiner teaches that its operating system distributes documents such that a request load is balanced across the servers and that this statement does not teach or even suggest that the documents are stored substantially equally throughout the servers, as claimed, but rather that the documents are stored to equalize access to the servers, have been fully considered but they are not persuasive. To test the scope of the claim language in claim 34, the examiner has shown this claim to three other examiners in the same art. Each of them had a different interpretation of the meaning of the claimed subject matter, "distributing... documents... substantially equally amongst ... nodes". One regarded the claimed subject matter as distributing among nodes documents in a way that each of the nodes contains documents of substantially same contents as the others. Another examiner regarded the claimed subject matter as distributing among nodes documents in a way that each of the nodes contains substantially same amount (total size) of documents as the others. Yet another examiner regarded the claimed subject matter broadly as distributing among nodes documents substantially equally in any reasonable manner, such as equally accessible to the user in turnaround time, or in finding a result, since the claim language does not specify in what capacity that the distributed documents are substantially equal. Additionally, the claim language "substantially equally" is not equivalent to "completely equally", therefore the examiner maintains that Narendran does teach the subject matter of "distributing... documents... substantially equally amongst ... nodes", since the document distribution is to try to balance the request load among the document servers (col. 17, lines 25-28), at least the documents are distributed substantially equally in their sizes and access rates among the servers.

See also *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.").


Leslie Wong
Primary Examiner